

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

---

VALERIE RUBINSTEIN,	x
individually and on behalf of	:
all others similarly situated,	:
Plaintiff,	
- against -	
DEPARTMENT STORES NATIONAL BANK,	:
Defendant.	

---

**PRELIMINARY PRE-TRIAL STATEMENT**

---

Plaintiff Valerie Rubinstein (“Rubinstein”) and defendant Department Stores National (“DSNB”) respectfully submit this Joint Preliminary Pre-Trial Statement pursuant to the Court’s Order dated February 26, 2008 (in No. 08 Civ. 1596) and June 5, 2008 (in No. 08 Civ. 4843):

**NATURE OF THE ACTIONS**

In these actions, Rubinstein alleges claims under the Truth in Lending Act, 15 U.S.C. § 1601, et seq. (“TILA”), and Regulation Z, 12 C.F.R. § 226.1, et seq. (“Regulation Z”).

Rubinstein alleges that DSNB violated TILA and Regulation Z by failing to make certain disclosures in monthly periodic billing statements provided to Rubinstein in connection with certain credit card accounts. Rubinstein brings her claims for herself and for putative classes.

DSNB denies Rubinstein’s claims on the merits. DSNB further denies that the claims are suitable for treatment on a class-action basis.

**JURISDICTION**

Rubinstein alleges that this Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337 and 15 U.S.C. § 1640(e). Rubinstein allegedly resides in New York, New York. DSNB does not contest this Court’s jurisdiction.

**MATERIAL UNCONTESTED AND DISPUTED FACTS**

The following material facts are not in dispute:

1. Rubinstein opened a Bloomingdale's Insider account issued by DSNB.
2. Exhibit A to the Complaint in Case No. 08 Civ. 1596 is a copy of a portion of a periodic statement for that account, with a closing date of February 18, 2007, that was made available to Rubinstein on an Internet website.
3. Exhibit B to the Complaint in Case No. 08 Civ. 1596 is a copy of a portion of a periodic statement for that account, with a closing date of May 18, 2007, that was made available to Rubinstein on an Internet website.
4. Rubinstein opened a Bloomingdale's Visa account issued by DSNB.
5. Exhibit A to the Complaint in Case No. 08 Civ. 4843 is a copy of a portion of a periodic statement for that account, with a closing date of May 27, 2007, that was made available to Rubinstein on an Internet website.
6. Exhibit B to the Complaint in Case No. 08 Civ. 4843 is a copy of a portion of a periodic statement for that account, with a closing date of June 21, 2007, that was made available to Rubinstein on an Internet website.

**UNCONTESTED LEGAL ISSUES**

The parties are not able to agree that any legal issues are uncontested.

**FACTUAL AND LEGAL ISSUES TO BE DECIDED**

The parties respectfully submit that the following are issues of fact and/or law that will need to be decided:

1. Whether the Complaint states a claim upon which relief can be granted, based on the forms of account statements at issue.
2. Whether the alleged classes may be certified as class actions under Federal Rule of Civil Procedure 23.

Plaintiff alleges that the following issues of fact and/or law will also need to be decided:

1. DSNB's net worth for purposes of assessing liability for statutory damages

under TILA § 1640(a)(2)(B).

2. Appropriate damages, attorneys' fees, and costs.

DSNB alleges that the following issues of fact and/or law will also need to be decided:

1. Whether the claims are barred, in whole or in part, as to Rubinstein or any supposed class members, by the applicable statute of limitations, including, without limitation, 15 U.S.C. § 1640(e).
2. Whether the Complaint is barred pursuant to 15 U.S.C. § 1640(c) because the alleged violations of TILA, if any, resulted from a bona fide error.
3. Whether DSNB acted in good faith and in accordance with reasonable commercial standards pursuant to, without limitation, 15 U.S.C. §§ 1640(c) & (f).
4. Whether the claims are barred, in whole or in part, by the conduct, actions and inactions of Rubinstein and/or any of the supposed class members under the doctrines of ratification and waiver.
5. Whether some or all of Rubinstein's claims are barred due to the mailing of paper statements.

#### **LEGAL BASES FOR PLAINTIFF'S CLAIMS**

Rubinstein alleges her claims under TILA and Regulation Z.

#### **LEGAL BASES FOR DEFENDANT'S DEFENSES**

DSNB's affirmative defenses arise under TILA, including 15 U.S.C. §§ 1640(c), 1640(e) and 1640(f).

#### **PROOF**

Rubinstein has the burden of establishing her claims by a preponderance of the evidence, and also bears the burden of establishing the requisite elements of certification pursuant to Miles v. Merrill Lynch & Co., Inc. (In re Initial Pub. Offerings Secs. Litig.), 471 F.3d 24 (2d Cir. 2006). DSNB has the burden of establishing any affirmative defenses.

**AMENDMENTS OF PLEADINGS**

The parties do not currently believe that the pleadings need to be amended, nor do they believe that any additional parties need be joined at this time.

**CONSENT TO PROCEED BEFORE MAGISTRATE JUDGE**

The parties do not consent to proceed before a Magistrate Judge at this time.

**FED. R. CIV. P. 26(A)(1) DISCLOSURES**

The parties do not anticipate that any changes to the form or requirements of the disclosures under Rule 26(a) are necessary.

**DISCOVERY**

Plaintiff anticipates that discovery will be needed on the following topics:

1. The facts applicable to the elements of certification under Federal Rule of Civil Procedure 23;
2. DSNB's practices with respect to the preparation of the disputed account statements and, potentially, the standard in the industry with respect to such practices;
3. The sending of those account statements to Rubinstein and other class members;
4. Class size;
5. DSNB's net worth;
6. The frequency and persistence of failures of compliance by DSNB;
7. The resources of DSNB;
8. The number of persons adversely affected;
9. The extent to which DSNB's failure of compliance was intentional.
10. Procedures, if any, maintained by DSNB to avoid the violations of TILA alleged by Plaintiff.

DSNB anticipates that discovery will be needed on the following topics:

1. The facts applicable to the elements of certification under Federal Rule of

Civil Procedure 23;

2. DSNB's practices with respect to the preparation of the disputed account statements and, potentially, the standard in the industry with respect to such practices;
3. The receipt and understanding of those account statements by Rubenstein and other supposed class members;
4. The course of the relationship between Rubenstein and/or other supposed class members, on the one hand, and DSNB, on the other;
5. While DSNB denies any liability whatsoever to Rubenstein or the alleged class, if the Court finds that the claims have merit, the amount of damages suffered, if any, by Rubenstein and the other supposed class members based on the account statements provided, particularly in those situations where a paper statement was also sent to Rubenstein and other members of the alleged class.

**CHANGES TO LIMITATIONS ON DISCOVERY**

The parties do not anticipate that any changes to the limitations on discovery imposed under the Federal Rules of Civil Procedure or the Local Rules are necessary.

**STATUS OF SETTLEMENT DISCUSSIONS**

The parties have not engaged in any settlement discussions to date.

**TRIAL BY JURY**

Rubinstein requests a trial by jury, and anticipates that the trial will last seven business days. DSNB would elect to proceed with trial to the Court, and anticipates that trial will last seven business days.

//

//

//

//

### OTHER ORDERS

The parties propose the following dates for a scheduling order:

Written Initial Disclosures (Fed. R. Civ. P. 26(a))	August 29, 2008
Close of Non-Expert Discovery	January 30, 2009
Close of Expert Discovery	March 27, 2009
Last Day to file Dispositive Motions	May 15, 2009
Pretrial Conference	August 21, 2009
Trial	December 4, 2009

### CONSOLIDATION WITH SIMILAR ACTIONS

DSNB submits that consolidation of the instant action with two other actions pending before the Court -- Rubinstein v. Department Stores National Bank, Case No. 1:08-cv-04843-LTS, filed on May 23, 2008 (“Rubinstein 2”); and Taub v. Department Stores National Bank, Case No. 1:08-cv-05053-SHS-GWG, filed on June 2, 2008 (“Taub”) -- is appropriate. The three actions involve allegations with respect to the form of account statements provided by DSNB, and claims arising under TILA and Regulation Z. Also, as in this action, Rubinstein 2 and Taub are in early stages of development. DSNB’s response in Rubinstein 2 is due on July 2, 2008, and no response is yet due in Taub.

Plaintiff disagrees. Plaintiff believes that Rubinstein 2 should be treated as a “related” case. But this action and Rubinstein 2 should not be consolidated, because they involve separate card products (“private label” v. Visa) and different violations of TILA, and thus, separate classes. Rubinstein asserts that each class is entitled to a potential statutory class action recovery up to \$500,000. Moreover, Taub also involves a separate class under yet another card product for use at a different department store chain than in Rubinstein, as well as another, different

//

//

violation of Regulation Z. Plaintiff in Taub asserts that the Taub class is also entitled to a potential recovery of up to \$500,000 in statutory damages.

Respectfully Submitted,

Dated: June 24, 2008

STROOCK & STROOCK & LAVAN LLP

By: /s/ Lisa M. Simonetti  
Lisa M. Simonetti

Attorneys for Defendants  
DEPARTMENT STORES NATIONAL  
BANK

Dated: June 24, 2008

BROMBERG LAW CENTER  
BRIAN L. BROMBERG

By: /s/ Brian L. Bromberg  
Brian L. Bromberg

Harley J. Schnall  
Law Office of Harley J. Schnall

Attorneys for Plaintiff  
VALERIE RUBINSTEIN